

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Attorney Docket No.: 15039US02

PATENT

In the Application of:)	
)	
Jeyhan Karaoguz, et al.)	<u>Electronically Filed On October 6, 2009</u>
)	
Serial No.: 10/675,358)	
)	
Filed: September 30, 2003)	
)	
For: MEDIA PROCESSING SYSTEM)	
COMMUNICATING ACTIVITY)	
INFORMATION TO SUPPORT USER)	
INTERACTION DURING MEDIA)	
BROADCASTS)	
)	
Examiner: Duffield, Jeremy S.)	
)	
Group Art Unit: 2427)	
)	
Confirmation No.: 5972)	

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicants respectfully request that the Board of Patent Appeals and Interferences reverse the final rejection of claims 1-38 of the present application. The Applicants request a 1-month extension of time in which to respond. Thus, the period for response runs until November 4, 2009 (3 months from the mailing date of the Notice of Appeal).

REAL PARTY IN INTEREST
(37 C.F.R. § 41.37(c)(1)(i))

The real party in interest is Broadcom Corporation, having a place of business at 16215 Alton Parkway, Irvine, California 92619.

RELATED APPEALS AND INTERFERENCES
(37 C.F.R. § 41.37(c)(1)(ii))

The following appeals **may** be related to, directly affect or be directly affected by, or have a bearing on the Board's decision in the present appeal:

- U.S. App. No. 10/675,467, filed September 30, 2003
- U.S. App. No. 10/675,057, filed September 30, 2003
- U.S. App. No. 10/667,833, filed September 30, 2003
- U.S. App. No. 10.675,491, filed September 30, 2003
- U.S. App. No. 10.675,436, filed September 30, 2003

As of the filing date of this Appeal Brief, the Applicants are not aware of any decisions that have been rendered with respect to any of the Appeals noted above.

STATUS OF THE CLAIMS
(37 C.F.R. § 41.37(c)(1)(iii))

The present application includes claims 1-38, all of which stand rejected. The Applicants identify claims 1-38 as the claims that are being appealed. The text of the claims involved in this Appeal, namely, claims 1-38, is provided in the Claims Appendix.

STATUS OF AMENDMENTS
(37 C.F.R. § 41.37(c)(1)(iv))

Subsequent to the final rejection of claims 1-38 mailed May 28, 2009, the Applicants filed a Notice of Appeal and Pre-Appeal Brief Request for Review.¹ No claims were amended in response to the final rejection of claims 1-38.

SUMMARY OF CLAIMED SUBJECT MATTER
(37 C.F.R. § 41.37(c)(1)(v))

Independent claim 1 recites the following:

A method of communicating activity information to support user interaction in a communication network,² the method comprising:

accepting from a first user information identifying a second user;³

receiving from the first user at least one user-selected characteristic associated with media;⁴

receiving a media request⁵ from the first user via a communication network,⁶ wherein the media request relates to media to be sent directly⁷ via the communication network from the second user to the first user;⁸

¹ See August 4, 2009 Notice of Appeal and Pre-Appeal Brief Request for Review.

² See present application, e.g., at page 4, lines 2-16.

³ See *id.*, e.g., at page 4, lines 4-5.

⁴ See *id.*, e.g., at page 4, lines 5-6, page 16, lines 3-6, page 17, lines 10-15 and 19-22, page 18, lines 1-5 and 12-21, Figure 1B, refs. 125, 127, 132 and 134.

⁵ See *id.*, e.g., at page 4, lines 4-13, page 21, lines 20-21, page 28, lines 1-3.

⁶ See *id.*, e.g., at Figure 5, ref. 500.

⁷ See *id.*, e.g., at page 23, lines 4-13, page 24, lines 17-20, page 27, lines 9-16, page 30, lines 6-10.

⁸ See *id.*, e.g., at page 27, line 20 to page 28, line 7.

processing the media request from the first user via the communication network,⁹ the requested media having a pre-defined set of characteristics;¹⁰

notifying the second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media matches¹¹ the at least one user-selected characteristic;¹² and

refraining from notifying the second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media does not match the at least one user-selected characteristic.¹³

Independent claim 11 recites the following:

A method of communicating activity information to support user interaction in a communication network,¹⁴ the method comprising:

associating at least one media characteristic with a user,¹⁵

processing a direct request¹⁶ for media of another user, from the user,¹⁷ the media having a pre-defined set of characteristics;¹⁸

⁹ See *id.*, e.g., at page 4, lines 7-8.

¹⁰ See *id.*, e.g., at page 4, line 8, page 17, lines 10-15 and 19-22, page 18, lines 1-5 and 12-21.

¹¹ See *id.*, e.g., at page 17, lines 9-15 and 19-22, page 18, lines 1-4, page 21, line 10 to page 22, line 14.

¹² See *id.*, e.g., at page 4, lines 9-12, page 15, line 12 to page 20, line 2, Figure 1B, refs. 125, 127, 132 and 134.

¹³ See *id.*, e.g., at page 4, lines 12-16, page 15, line 12 to page 20, line 2, Figure 1B, refs. 125, 127, 132 and 134.

¹⁴ See *id.*, e.g., at page 5, line 18 to page 6, line 16.

¹⁵ See *id.*, e.g., at page 5, lines 20-22.

¹⁶ See *id.*, e.g., at page 4, lines 4-13, page 21, lines 20-21, page 28, lines 1-3.

¹⁷ See *id.*, e.g., at page 5, line 22.

¹⁸ See *id.*, e.g., at page 5, line 22 to page 6, line 1, page 17, lines 10-15 and 19-22, page 18, lines

sending a notification via a communication network if the pre-defined set of characteristics for the requested media matches the at least one media characteristic;¹⁹ and

refraining from sending a notification if the pre-defined set of characteristics for the requested media does not match the at least one media characteristic.²⁰

Independent claim 16 recites the following:

A system supporting the communication of activity information to support user interaction in a communication network,²¹ the system comprising:

a first storage, at a first location, having an associated first network address;²²

a first set top box circuitry²³ at the first location,²⁴ the first set top box circuitry communicatively coupled to the first storage to support consumption of media by a first user;²⁵

a second storage, at a second location, having a second network address;²⁶

a second set top box circuitry²⁷ at the second location,²⁸ the second set top box circuitry communicatively coupled to the second storage to support consumption of media by a second user;²⁹

1-5 and 12-21.

¹⁹ See *id.*, e.g., at page 6, lines 1-4, page 17, lines 9-15 and 19-22, page 18, lines 1-4, Figure 1B, refs. 125, 127, 132 and 134.

²⁰ See *id.*, e.g., at page 6, lines 4-7.

²¹ See *id.*, e.g., at page 6, line 17 to page 7, line 12, Figure 1B, refs. 125, 127, 132 and 134.

²² See *id.*, e.g., at page 6, lines 19-20.

²³ See *id.*, e.g., at page 14, lines 1-4.

²⁴ See *id.*, e.g., at page 6, lines 20-21.

²⁵ See *id.*, e.g., at page 6, line 21 to page 7, line 1.

²⁶ See *id.*, e.g., at page 7, lines 1-3.

²⁷ See *id.*, e.g., at page 14, lines 1-4, page 23, line 14 to page 23, line 5.

²⁸ See *id.*, e.g., at page 7, lines 3-4.

²⁹ See *id.*, e.g., at page 7, lines 4-5.

at least one media characteristic associated with the second user,³⁰ and server software that receives a direct request,³¹ from the first user for media from the second user, that identifies at least the associated first network address and media having at least one pre-defined characteristic, and that notifies, via a communication network, the associated second network address if the at least one media characteristic matches the at least one pre-defined characteristic.³²

Independent claim 24 recites the following:

A method of communicating activity information to support user interaction in a communication network,³³ the method comprising:

notifying a first user, via a communication network, of consumption of requested media of the first user directly requested by a second user, if a pre-defined set of characteristics for the requested media matches at least one user-selected media characteristic,³⁴ and

refraining from notifying the first user, via the communication network, of the consumption of the requested media by the second user, if the pre-defined set of characteristics for the requested media does not match the at least one user-selected media characteristic.³⁵

³⁰ See *id.*, e.g., at page 7, lines 5-7.

³¹ See *id.*, e.g., at page 4, lines 4-13, page 21, lines 20-21, page 28, lines 1-3.

³² See *id.*, e.g., at page 7, lines 8-12, page 17, lines 9-15 and 19-22, page 18, lines 1-4.

³³ See *id.*, e.g., at page 5, line 18 to page 6, line 16.

³⁴ See *id.*, e.g., at page 4, lines 9-12, page 15, line 12 to page 20, line 2, Figure 1B, refs. 125, 127, 132 and 134.

³⁵ See *id.*, e.g., at page 4, lines 12-16, page 15, line 12 to page 20, line 2, Figure 1B, refs. 125, 127, 132 and 134.

Independent claim 33 recites the following:

A system supporting the communication of activity information to support user interaction in a communication network,³⁶ the system comprising:

a first set top box circuitry at a first location configured to support consumption of media by a first user;³⁷ and

software³⁸ that notifies a second user at a second location, via a communication network, of the consumption of media of the second user directly requested and consumed by the first user if a pre-defined set of media characteristics for requested media match at least one user-selected media characteristic associated with the first user,³⁹ and that refrains from notifying the second user at the second location, via the communication network, of the consumption of media of the second user by the first user of the pre-defined set of media characteristics for the requested media does not match the at least one user-selected media characteristic associated with the first user.⁴⁰

³⁶ See *id.*, e.g., at page 6, line 17 to page 7, line 12.

³⁷ See *id.*, e.g., at page 6, lines 19-20, at page 14, lines 1-4.

³⁸ See *id.*, e.g., at page 7, lines 8-12.

³⁹ See *id.*, e.g., at page 4, lines 9-12, page 15, line 12 to page 20, line 2, Figure 1B, refs. 125, 127, 132 and 134.

⁴⁰ See *id.*, e.g., at page 4, lines 9-12, page 15, line 12 to page 20, line 2, Figure 1B, refs. 125, 127, 132 and 134.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL
(37 C.F.R. § 41.37(c)(1)(vi))

- Claims 1, 3-15, 24 and 26-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 6,813,775 (“Finseth”) in view of U.S. 6,774,926 (“Ellis”).
- Claims 2 and 25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Finseth in view of Ellis and U.S. 7,065,778 (“Lu”).
- Claims 16-23 and 33-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Lu in view of Finseth and Ellis.

ARGUMENT
(37 C.F.R. § 41.37(c)(1)(vii))

As shown above, all of the pending claims stand rejected as being unpatentable over combinations that include Finseth and Ellis. However, as explained in detail below, the cited references do not describe, teach or suggest notifying a user of consumption of that user’s media by another based on a match, or receiving a media request from a first user via a communication network, wherein the media request relates to media to be sent directly from the second user to the first user.

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure (“MPEP”) states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that “rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some

rational underpinning to support the legal conclusion of obviousness.”

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)).

Additionally, if a *prima facie* case of obviousness is not established, an Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

As noted in the Manual of Patent Examining Procedure, “[t]o establish *prima facie* obviousness of a claimed invention, **all** the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).” See MPEP at 2143.03 (emphasis added). Further, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA).” See *id.* (emphasis added).

With those principles in mind, the Applicants now turn to the claim rejections in particular.

I. The Proposed Combination Of Finseth And Ellis Does Not Render Claims 1, 3-15, 24 And 26-32 Unpatentable

The Applicants first turn to the rejection of claims 1, 3-15, 24 and 26-32 as being unpatentable over Finseth in view of Ellis.

A. The Proposed Combination Does Not Render Claims 1 And 3-10 Unpatentable

Claim 1 recites, in part, “receiving a media request from the first user via a communication network, wherein the media request relates to media to be sent directly via the communication network from the second user to the first user; processing the media request from the first user via the communication network, the requested media having a pre-defined set of characteristics; notifying the second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic; and refraining from notifying the second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media does not match the at least one user-selected characteristic.”

1. Notification Of Consumption Based On A Match

With the exception of “receiving a media request from the first user via a communication network, wherein the media request relates to media to be sent directly via the communication network from the second user to the first user,” the Office Action seemingly asserts that Finseth discloses the limitations of claim 1. *See* May 28, 2009 Office Action a pages 4-5. However, Finseth does not describe, teach or suggest “notifying the second user, via the communication

network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic,” as recited in claim 1, as explained below.

Finseth “relates to systems and methods for presenting media programs to subscribing viewers, and in particular to a system and method for sharing viewer preferences among viewers.” Finseth at column 1, lines 16-19. Finseth discloses a method that “transmit[s] at least a portion of the first viewer preference information to a second user for storage in a memory of a second user device.” *See id.*

In Finseth, one subscriber decides to share information with another subscriber. After the subscriber decides, without any prompting from the other, to share that information, Finseth discloses that the other may choose to receive portions of the information that the other decided to share. *See* Finseth, *e.g.*, at column 17, lines 29-44.

In particular, Finseth discloses the following:

The method comprises the steps of storing first user viewer preference information characterizing media programs selected by the first user in a memory of a first user device, and transmitting at least a portion of the first viewer preference information to a second user for storage in a memory in a second user device.

Id. at column 2, lines 22-33. Further,

When the user wants to share viewing preference information, the user initiates the process using, for example, remote control 86. To share viewing preference information a user must first select with whom to share the information, which is represented by box 132.

Id. at column 12, lines 23-28 (emphasis added). *See also id.* at column 13, lines 35-48 (“When a user decides to share viewing information with a group, the user initiates a multi-step process...”).

Finseth is clear that the sharing process is initiated by a sharer selecting another subscriber(s) with whom to share the viewer preference information. The process does not begin, however, with the recipient requesting anything from the sharer.

The Applicants respectfully submit that, contrary to the assertion in the Office Action, Finseth does not describe, teach or suggest “notifying the second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic,” as recited in claim 1.

The Office Action cites Finseth at column 12, lines 30-45, column 13, lines 1-28 and column 15, lines 52-65 as disclosing “notifying the at least a second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic [associated with media]; and refraining from notifying the at least a second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media does not match the at least one user-selected characteristic [associated with media].” *See* May 28, 2009 Office Action at pages 4-5. In order to demonstrate that Finseth does not describe, teach or suggest these limitations, the Applicants will address each of these cited portions.

First, Finseth at column 12, lines 30-45 states the following:

A user must also select what information to share with the selected recipient, as represented by box 134. A user may choose to share the entire contents of his/her user-specific sub-history table with the selected recipient. A user may choose to tell the recipient only about a specific television program. Using remote control 86 (FIG. 3) or another input device such as an infrared keyboard, a user can also share specific comments or reviews regarding a television program. However, for privacy reasons, a user may wish to send only summary or depersonalized information regarding his or her viewing preferences where only certain attributes from his or her preference history are shared with others.

Receiver 64 then transmits at least a portion or a processed version of the selected viewing preference information to the selected recipient (e.g. second user) via telephone lines or the Internet, which is represented in box 136.

Finseth at column 12, lines 30-45. This portion of Finseth states that a “user may choose to share the entire contents of his/her **user-specific sub-history table**.” *See id.* (emphasis added). The user-specific sub-history table stores “attributes of the television program viewed by a user.” *See id.* at column 12, lines 20-23.

This cited portion of Finseth indicates that the user selects which information to send, but not that another subscriber actually requests the information. Notably, the cited portion of Finseth above discloses that a user **must** select which information to share with a recipient. Once selected, that information is then shared with the recipient. However, this cited portion of Finseth does not describe, teach or suggest that such information is shared only if pre-defined characteristics of media **match** user-selected characteristics. That is, this portion of Finseth does not describe, teach or suggest “notifying the at least a second user, via the communication network, of the consumption of the requested media by the first user, if the **pre-defined set of**

characteristics for the requested media matches the at least one user-selected characteristic [associated with media]; and refraining from notifying the at least a second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media does not match the at least one user-selected characteristic [associated with media],” as recited in claim 1. Instead, in Finseth, as noted above, a user selects information to share, and then that information is sent to the recipient without any determination as to whether that information matches or does not match another set of information.

Next, Finseth at column 13, lines 1-28 recites the following:

A second user device such as the receiver 64 of the selected recipient at destination receiver station 34 receives preference information via interface 82, which is represented by box 138. CPU 74 of destination receiver station 34 evaluates the received viewing preference information based on security measures as represented by box 140. The security measures include each receiver 64 maintaining a list of recognizable sources that identifies from whom viewing preference information will be accepted. The security measures also specify the type of preference information that will be accepted. For instance, a user may select to accept only summary information or only specific attributes related to television programs. If receiver 64 at the destination accepts the received viewing preference information, then receiver 64 stores the preference information in the selection history table in memory 78 (FIG. 3), as is represented by box 142. The user designates whether the received viewing preference information of another individual is stored in a separate user-specific sub-history table or is merged into a single common preference history table.

Once stored, the shared viewing preference information can be used by a user to see what other users are recommending to watch or, by using similarity matching techniques as described above, to build a program guide that displays programs that other users would find interesting. The shared viewing preference information

can also be used to provide advertising that targets a specific audience. The present invention allows users to conveniently communicate by electronically sharing their television viewing experience and to influence the viewing patterns of others.

See Finseth at column 12, line 66 to column 13, line 28.

Note, this cited portion indicates a “second user device such as the receiver 64 of the **selected** recipient.” This is consistent with the above explanation that a user decides to share with another, but not that there is a request from the **selected** recipient. Again, one user **selects** another user with whom to share.

The cited portion above also discusses security measures. Indeed, the “security measures include each receiver 64 maintaining a list of recognizable sources that identifies from whom viewing preference information will be accepted. The security measures also specify the type of preference information that will be accepted.” See *id.* at column 13, lines 4-9. Again, however, this is related to information that a user will accept from another that decides to share with that user. There simply is no request, however. This cited portion remains focused on **shared**, but not requested, viewing preference information. See *id.* at column 13, lines 19-20. It also notes “similarity matching techniques ... to **build a program guide** that displays programs that other users would find interesting.” See *id.* at column 13, lines 21-23.

However, there is nothing in this cited portion, nor the remainder, of Finseth that describes, teaches or suggests “notifying the at least a second user, via the communication network, of the consumption of the requested media by the first user, if the **pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic [associated with media]**; and refraining from notifying the at least a second user, via the

communication network, of the consumption of the requested media by the first user, if the **pre-defined set of characteristics for the requested media does not match the at least one user-selected characteristic [associated with media],**” as recited in claim 1. Instead, in Finseth, as noted above, a user selects information to share, and then that information is sent to the recipient **without any determination as to whether that information matches or does not match another set of information.**

Next, **Finseth at column 15, lines 52-65** recites the following:

The "How Much Detail?" category 198 allows a user to control the amount of viewing preference information to share with the destination. For privacy reasons, a user may not wish to share the entire contents of his/her user-specific sub-history table. Instead, a user may only wish to share a summary of the attributes contained therein. A summary would not include the titles of the viewed television programs or the channel definitions of the channels where the program was shown, but would include certain attributes of the viewed programs so that only a user's general viewing preferences would be communicated to others. A user could further restrict the amount of information communicated to others by specifically selecting contents of its sub-history table to be sent.

See id. at column 15, lines 52-65. This portion of Finseth merely discloses that a user can control the amount of preference information to share with others. That is, the user may share a sub-set of the information within his/her sub-history table. Similar to the other cited portion of Finseth, though, this portion does not describe, teach or suggest “notifying the at least a second user, via the communication network, of the consumption of the requested media by the first user, if the **pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic [associated with media];** and refraining from notifying the at least a second user, via the communication network, of the consumption of the requested media by the

first user, if the **pre-defined set of characteristics for the requested media does not match the at least one user-selected characteristic [associated with media]**,” as recited in claim 1.

As explained above, the portions of Finseth relied on by the Office Action do not describe, teach or suggest that **delivery** of viewing preference information from a first user to a second user **is predicated on a match of any kind**. Instead, they disclose that information is shared based on what a user actually selects to send, as opposed to any kind of match. The portions of Finseth that the Office Action cites disclose that a user **must select which information to share with a recipient**. See Finseth at column 12, lines 30-31 (“A user **must** select what information to share with the selected recipient”). **Once selected** (as opposed to a determination of any “match”), that information is then shared with the recipient. Thus, Finseth discloses that information is shared based on what the user selects as the information to share with another. Once the user affirmatively selects the information to share, the information is then shared with the recipient. In this way, a user can control the amount of preference information to share with others. See Finseth at column 15, lines 52-65. Again, Finseth discloses that information is sent based on what a user selects, but not because of a match, in general, and certainly not because of “**pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic [associated with media]**,” in particular.

Thus, for at least these reasons, the Applicants respectfully request reconsideration of the rejection of claim 1 as being unpatentable over Finseth in view of Ellis. The Applicants respectfully submit that the proposed combination of Finseth and Ellis does not render claims 1-9 unpatentable.

2. Receiving A Media Request From The First User Via A Communication Network, Wherein The Media Request Relates To Media To be Sent Directly From The Second User To The First User

The Office Action indicates that Finseth “does not clearly teach receiving a media request from the first user via a communication network, wherein the media request relates to media to be sent directly via the communication network from a second user to the first user.” *See* May 28, 2009 Office Action at page 5. In an attempt to overcome this deficiency the Office Action relies on Ellis. *See id.* As explained below, however, Ellis does not remedy this acknowledged deficiency of Finseth.

Ellis discloses a “system for distributing personal television channel programs from individual contributors to viewers over a communications network.” *See id.* at column 1, lines 25-30. “Personal television programming may be distributed in real time or using a server so that the programming may be distributed on demand.” *See id.* at column 1, lines 30-32.

In Ellis an “individual at home or at another suitable location may use user equipment 34 to create content for a personal television program or channel.” *See id.* at column 3, lines 19-21.

However, another user does not request content directly from that individual. Instead, Ellis discloses the following:

As shown in FIG. 8, a contributor at user television equipment 122 may distribute personal television channel programming to viewers at user television equipment 124 that is connected to the same cable system headend 126. With this type of system, contributors may upload videos to a server such as server 128. Server 128 may be used to cache or otherwise store the videos. Stored videos may be retrieved by viewers on demand. Videos may also be distributed from the contributor to the viewers in real time.

See id. at column 8, lines 17-26. Notably, Ellis does not describe, teach or suggest that videos from the contributor that are distributed in “real time” are requested by the viewers. Instead, these videos are merely broadcast at set times. The viewers are able to tune into these videos based on channel guides that list broadcast times. As such, the viewers are not directly requesting video from the contributor in this scenario.

As for the “video on demand,” Figure 8 of Ellis clearly shows that the cable system headend 126 includes the server 128. *See id.* at Figure 8. The server is separate and distinct from the contributor and the viewers. *See id.*

[A] contributor may transmit a video for a personal television channel to server 128 using a cable modem and a communications scheme such as an Internet-based scheme. The server may store the video until requested or until a scheduled broadcast time.

See id. at column 8, lines 27-32. Thus, the video is stored at the server, which is separate and distinct from the contributor. The stored video may be requested from the server, but not the contributor. *See also id.* at column 10, lines 18-20 (“Pressing a remote control OK key may direct the program guide to request the desired program from the server or other equipment on which the program is stored”).

In general, Ellis does not describe, teach or suggest that a viewer requests content directly from a contributor. Further, as noted above, the Office Action acknowledges that Finseth “does not clearly teach receiving a media request from the first user via a communication network, wherein the media request relates to media to be sent directly via the communication network from a second user to the first user.” *See* May 28, 2009 Office Action at page 5. The Applicants respectfully submit that neither Finseth, nor Ellis, alone or in combination with one another,

describes, teaches or suggests “receiving a media request from the first user via a communication network, wherein the media request relates to media to be sent directly via the communication network from the second user to the first user,” as recited in claim 1. Thus, for at least these reasons, the proposed combination does not render claims 1 and 3-10 unpatentable.

B. The Proposed Combination Of Finseth and Ellis Does Not Render Independent Claims 11 and 24 Unpatentable

Claim 11 recites, in part, “processing a **direct request** for media of another user, from the user, the media having a pre-defined set of characteristics; sending a notification via a communication network if the pre-defined set of characteristics for the **requested media matches** the at least one media characteristic; and refraining from sending a notification if the pre-defined set of characteristics for the requested media does not match the at least one media characteristic.” Independent claim 24 recites similar limitations. The Applicants respectfully submit that the proposed combination of Finseth and Ellis does not render claims 11, 24 or the claims that depend therefrom unpatentable for at least the reasons discussed above with respect to claim 1.

C. The Proposed Combination Does Not Render Claims 10 And 32 Unpatentable

Claim 10 recites, in part, “keeping a record of the notifying [of the consumption of the requested media of the second user by the first user]; and the record being used by the second user to provide one or both of services and/or incentives to the first user.” Claim 32 recites similar limitations. The Office Action cites Finseth at column 11, lines 20-42 and column 13, lines 1-18 as disclosing these limitations. *See* May 28, 2009 Office Action at page 8. However,

these cited portions merely disclose “selection history table that is linked to the current user and compares the attributes contained therein to attributes of the program guide objects of other programs.” *See* Finseth at column 11, lines 33-36. A determination is made as to “how well certain television programs correlate to the viewing preference information in the user-specific sub-history of the selection history table.” *See id.* at column 11, lines 36-40. Finseth also discloses “maintaining a list of recognizable sources that identifies from whom viewing preference information will be accepted.” *See id.* at column 13, lines 5-7. However, there is nothing in the portions that the Office Action relies on with respect to claim 10 that describes, teaches or suggests “keeping a record of the notifying [of the consumption of the requested media of the second user by the first user]; and the record being used by the second user to provide one or both of services and/or incentives to the first user.” Thus, for at least these additional reasons, the Office Action has not established that the cited references render claims 10 and 32 unpatentable.

II. The Proposed Combination Of Finseth, Ellis And Lu Does Not Render Claims 2 And 25 Unpatentable

The Applicants respectfully submit that the proposed combination of Finseth, Ellis and Lu does not render claims 2 and 25 unpatentable for at least the reasons discussed above in Section I.

III. The Proposed Combination Of Lu, Finseth And Ellis Does Not Render Claims 16-23 And 33-38 Unpatentable

Claim 16 recites, in part, “server software that receives a **direct request**, from the first user for media from the second user, that identifies at least the associated first network address

and media having at least one pre-defined characteristic, and that notifies, via a communication network, the associated second network address if the at least one media characteristic **matches** the at least one pre-defined characteristic.” Independent claim 33 recites similar limitations. As explained above in Section I, neither Fineth nor Ellis describe, teach or suggest these limitations. Thus, for at least these reasons, the proposed combination does not render claims 16, 33 or the claims that depend therefrom unpatentable.

Moreover, Lu also does not describe, teach or suggest these limitations. Lu “relates to the field of utilizing personalized video recorders and other similar types of devices to distribute television programming.” *See* Lu at column 1, lines 7-11. In particular, Lu discloses a system in which a user is able to record a show that is transmitted in another broadcast area. *See id.* at Abstract.

For example, Lu describes the following:

Specifically, personalized video recorder 200 is coupled to the Internet 302 such that it can receive an electronic programming guide (EPG) containing worldwide television programming from an EPG server computer 304. The user of personalized video recorder 200 utilizes the EPG to request delivery of a specific television show that may not be available to him or her. Upon reception of the request from personalized video recorder 200, EPG server computer 304 locates via Internet 302 one or more personalized video recorders... situated within a broadcast region of the requested television show. Subsequently, EPG server computer 304 programs one or more personalized video recorders... to record the requested television show when it is broadcast by a television content provider.... Once the personalized video recorders... record the television show, one or more of the personalized video recorders may transmit it to EPG server computer 304 which then transmits it to the requested personalized video recorder 200. In this manner, the present embodiment enables personalized video recorder 200 to order and

receive specific television shows that are unavailable from its television content provider....

Lu at column 6, lines 39-61. Thus, Lu discloses a system in which a user sends a recording request that is received by a server computer via the Internet. The server computer then **arbitrarily locates a recorder within the broadcast region of the show**, and then sends the recorded show back to the requesting user. In Lu, the user of one PVR does not directly request programming from another PVR. The Office Action acknowledges as much. *See* May 28, 2009 Office Action at page 11. The Applicants demonstrate above that Finseth and Ellis also do not describe, teach or suggest a direct request. Thus, for at least these reasons, the proposed combination does not render claims 16, 33 or the claims that depend therefrom unpatentable.

Further, Lu also does not describe, teach or suggest a notification if the at least one media characteristic **matches** the at least one pre-defined characteristic. There is nothing in the portions of Lu that the Office Action cites (namely, Lu at Figures 3 and 5, column 6, lines 32-35 and column 9, lines 8-20) that describe, teach or suggest notifying a second user of a first user's request for media of the second user. Instead, Lu merely discloses that an EPG receives a request from a PVR 200 (*see* Lu at column 6, lines 45-46), the EPG subsequently locating and programming a PVR within a broadcast region (*see id.* at column 6, lines 47-54), and the transmitting the recorded show to the PVR 200 (*see id.* at column 6, lines 54-58). Yet, the Office Action has not cited anything from Lu that describes, teaches or suggests "notif[ying], via a communication network, the associated second network address if the at least one media characteristic **matches** the at least one pre-defined characteristic,"

Thus, the Office Action has not shown that any of Lu, Finseth and Ellis describes, teaches or suggests “server software that receives a **direct request**, from the first user for media from the second user, that identifies at least the associated first network address and media having at least one pre-defined characteristic, and that notifies, via a communication network, the associated second network address if the at least one media characteristic **matches** the at least one pre-defined characteristic,” as recited in claim 16 (and similarly recited in claim 33). Thus, the proposed combination does not render claims 16, 33 or any claims depending therefrom unpatentable.

IV. CONCLUSION

For at least the reasons discussed above, the Applicants respectfully submit that the pending claims are allowable. Therefore, the Board is respectfully requested to reverse the rejections of pending claims 1-38.

V. PAYMENT OF FEES

The Commissioner is authorized to charge any necessary fees, including the \$540 fee for this Appeal Brief and the \$130 fee for the 1-month extension, or credit overpayment to Deposit Account 13-0017.

Respectfully submitted,

Dated: October 6, 2009

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CLAIMS APPENDIX
(37 C.F.R. § 41.37(c)(1)(viii))

1. A method of communicating activity information to support user interaction in a communication network, the method comprising:

accepting from a first user information identifying a second user;

receiving from the first user at least one user-selected characteristic associated with media;

receiving a media request from the first user via a communication network, wherein the media request relates to media to be sent directly via the communication network from the second user to the first user;

processing the media request from the first user via the communication network, the requested media having a pre-defined set of characteristics;

notifying the second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media matches the at least one user-selected characteristic; and

refraining from notifying the second user, via the communication network, of the consumption of the requested media by the first user, if the pre-defined set of characteristics for the requested media does not match the at least one user-selected characteristic.

2. The method of claim 1 wherein each of the first user and the second user are associated with one or more of an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number (ESN).

3. The method of claim 1 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

4. The method of claim 1 wherein the communication network is the Internet.

5. The method of claim 1 wherein the requested media comprises one or more of audio, a still image, video, real time video, and/or data.

6. The method of claim 1 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

7. The method of claim 1 wherein the information identifying the second user comprises at least one or more of a legal name, a given name, a screen name, a user identifier, a network identifier, an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number.

8. The method of claim 1 wherein the at least one user-selected characteristic comprises one or more of a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, and/or a language.

9. The method of claim 1 wherein the notifying comprises transmitting a message via the communication network.

10. The method of claim 1 further comprising: keeping a record of the notifying; and the record being used by the second user to provide one or both of services and/or incentives to the first user.

11. A method of communicating activity information to support user interaction in a communication network, the method comprising:

associating at least one media characteristic with a user;

processing a direct request for media of another user, from the user, the media having a pre-defined set of characteristics;

sending a notification via a communication network if the pre-defined set of characteristics for the requested media matches the at least one media characteristic; and

refraining from sending a notification if the pre-defined set of characteristics for the requested media does not match the at least one media characteristic.

12. The method of claim 11 wherein the requested media comprises one or more of audio, a still image, video, real time video, and/or data.

13. The method of claim 11 wherein the at least one media characteristic comprises one or more of a title keyword, a subject keyword, a genre, an artist, a time period, a media channel type, a mode, and/or a language.

14. The method of claim 11 wherein the pre-defined set of characteristics comprises at least one media characteristic.

15. The method of claim 11 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

16. A system supporting the communication of activity information to support user interaction in a communication network, the system comprising:

a first storage, at a first location, having an associated first network address;

a first set top box circuitry at the first location, the first set top box circuitry communicatively coupled to the first storage to support consumption of media by a first user;

a second storage, at a second location, having a second network address;

a second set top box circuitry at the second location, the second set top box circuitry communicatively coupled to the second storage to support consumption of media by a second user;

at least one media characteristic associated with the second user; and
server software that receives a direct request, from the first user for media from the second user, that identifies at least the associated first network address and media having at least one pre-defined characteristic, and that notifies, via a communication network, the associated second network address if the at least one media characteristic matches the at least one pre-defined characteristic.

17. The system of claim 16 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data.

18. The system of claim 16 wherein the associated first and second network addresses are one of an Internet protocol (IP) address, a media access control (MAC) address, or an electronic serial number (ESN).

19. The system of claim 16 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

20. The system of claim 16 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

21. The system of claim 16 wherein the server software is at a location separate from the first location and the second location.

22. The method of claim 16 wherein the at least one media characteristic comprises one or more of a title keyword, a subject keyword, a genre, an artist, a time period, a media channel type, a mode, and/or a language.

23. The method of claim 16 wherein the at least one pre-defined characteristic comprises one or more of a title keyword, a subject keyword, a genre, an artist, a time period, a media channel type, a mode, and/or a language.

24. A method of communicating activity information to support user interaction in a communication network, the method comprising:

notifying a first user, via a communication network, of consumption of requested media of the first user directly requested by a second user, if a pre-defined set of characteristics for the requested media matches at least one user-selected media characteristic; and

refraining from notifying the first user, via the communication network, of the consumption of the requested media by the second user, if the pre-defined set of characteristics for the requested media does not match the at least one user-selected media characteristic.

25. The method of claim 24 wherein each of the first user and the at least a second user are associated with one or more of an Internet protocol (IP) address, a media access control (MAC) address, and/or an electronic serial number (ESN).

26. The method of claim 24 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

27. The method of claim 24 wherein the communication network is the Internet.

28. The method of claim 24 wherein the requested media comprises one or more of audio, a still image, video, real time video, and/or data.

29. The method of claim 24 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

30. The method of claim 24 wherein the at least one user-selected characteristic comprises one or more of a title keyword, a subject keyword, a time period, a genre, an artist, a media channel type, a mode, and/or a language.

31. The method of claim 24 wherein the notifying comprises transmitting a message via the communication network.

32. The method of claim 24 further comprising: keeping a record of the notifying; and the record being used by the second user to provide one or both of services and/or incentives to the first user.

33. A system supporting the communication of activity information to support user interaction in a communication network, the system comprising:

a first set top box circuitry at a first location configured to support consumption of media by a first user; and

software that notifies a second user at a second location, via a communication network, of the consumption of media of the second user directly requested and consumed by the first user if a pre-defined set of media characteristics for requested media match at least one user-selected media characteristic associated with the first user, and that refrains from notifying the second user at the second location, via the communication network, of the consumption of media of the second user by the first user of the pre-defined set of media characteristics for the requested media does not match the at least one user-selected media characteristic associated with the first user.

34. The system of claim 33 wherein the media comprises one or more of audio, a still image, video, real time video, and/or data.

35. The system of claim 33 wherein consumption comprises one or more of playing audio, displaying a still image, displaying video, and/or displaying data.

36. The system of claim 33 wherein the communication network comprises one or more of a cable infrastructure, a satellite network infrastructure, a digital subscriber line (DSL) infrastructure, an Internet infrastructure, an intranet infrastructure, a wired infrastructure, and/or a wireless infrastructure.

37. The system of claim 33 wherein the software comprises server software at a location separate from the first location and the second location.

38. The method of claim 33 wherein the media characteristic comprises one or more of a title keyword, a subject keyword, a genre, an artist, a time period, a media channel type, a mode, and/or a language.

EVIDENCE APPENDIX
(37 C.F.R. § 41.37(c)(1)(ix))

- (1) U.S. 6,813,775 (“Finseth”), entered into record by Examiner in November 8, 2007 Office Action.
- (2) U.S. 7,065,778 (“Lu”), entered into record by Examiner in November 8, 2007 Office Action.
- (3) U.S. 6,774,926 (“Ellis”), entered into record by Examiner in December 31, 2008 Office Action.

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RELATED PROCEEDINGS APPENDIX
(37 C.F.R. § 41.37(c)(1)(x))

As of the filing date of this Appeal Brief, the Applicants are unaware of any decisions rendered by the Board of Patent Appeals and Interferences with respect to the “related” appeals noted.